rymple, 17 Eng. Rul. Cas. 11. Hence evidence must establish matrimonial consent. 1 *Fras. Husb. and Wife,* 399; *Campbell v. Campbell,* L. R. 1 H. L. Sec. 200. Marriage cannot be proved by cohabitation alone. *Com. v. Stump,* 53 Pa. 132. And acknowledgment to avoid suspicion does not appear to be enough. *Rose v. Clark,* 8 Paige 574. The evidence, however, need not be direct. Upon showing of certain facts presumption will arise which may become unanswerable. *Campbell v. Campbell, supra.* The proof, to raise such a presumption, must be that the parties held themselves out as married and assumed the rights and duties of the relationship. Their reputation must be general and consistent with matrimonial cohabitation and must not have been illicit in its inception unless facts clearly show a subsequent matrimonial consent. *Dysart Peerage Case,* L. R. 6 App. Cas. 514; *Rundle v. Pegram,* 49 Miss. 756; *Wilcox v. Wilcox,* 46 Hun. 40. In criminal actions where proof of marriage would be proof of guilt the presumption will not be entertained or is rebutted by the presumption of innocence. In such cases there must be actual proof of marriage. *Morriss v. Miller,* 4 Burr. 56; *Clayson v. Wardell,* 4 Comst. 242. Where statutes provide a legal ceremony they are construed as merely directory unless there is an express provision that marriages not following the statute shall be void. *Meister v. Moore,* 96 U. S. 76.

NEGLIGENCE—BURDEN OF PROOF—CONTRIBUTORY NEGLIGENCE.—AXELROD V. NEW YORK CITY RY., 95 N. Y. SUPP. 1072—*Held,* that in an action for injuries, plaintiff has the burden of proving freedom from contributory negligence. Patterson, J. *dissenting.*

The decisions upon this point are in direct conflict. The rule has been stated to be that the burden is on the plaintiff to show affirmatively by a preponderance of sufficient evidence not only that the negligence of the defendant contributed to the accident but also that the plaintiff was entirely free from negligence proximately causing the injury. *Thomas, Negligence,* 357; *Chisholm v. State,* 141 N. Y. 246. On the other hand it is said that contributory negligence is purely a matter of defense. *Randall v. Northern Tel. Co.,* 54 Wis. 140; *Robinson v. W. P. R. Co.,* 48 Cal. 409. The weight of authority seems to be against the present case. *McKimble v. B. & M. Railroad,* 139 Mass. 542; *Penn. Canal Co. v. Bently,* 66 Penn. St. 30. The greatest negligence on the part of the defendant will not cure the least negligence contributory to the injury on the part of the plaintiff. *Griffin v. N. Y. Cent. R. Co.,* 40 N. Y. 34. Some states, however, adopt the doctrine of comparative negligence, holding that although the injured person has contributed slightly to his own injury, yet recovery may be had if the defendant was grossly negligent. *Chicago etc. R. v. Johnson,* 116 Ill. 206; *Houston etc. R. Co. v. Gorbett,* 49 Tex. 473.

SLAVERY—RIGHT OF INHERITANCE—JOHNSON V. SHEPHERD, 39 So. 223 (ALA.)—Slaves cohabited and had a child before the war. Upon the death of the mother the father commenced a cohabitation with another slave which continued until after the close of the war, resulting in the birth of another child. *Held,* that though the second child born after the war, was legitimate, he could not inherit from first child who was illegitimate.

It was formerly the law when slavery existed in this country that a slave could not marry, because he could not make a valid contract; *Hall v. United States,* 92 U.S. 27; because the duties of slaves were inconsistent with those of a husband or a wife; *Malinda v. Gardner,* 24 Ala. 719; and because a slave was property. *Howard v. Howard,* 6 Jones (N. C.) 235. But after emancipation the legal relation of man and wife attached upon the theory of a common-law marriage. *Washington v. Washington,* 69 Ala. 281. Hence where slavery was recognized, in the absence of statute, legitimacy of colored offspring was determined by whether birth of child was before or after Sept. 29, 1865. *Malinda v. Gardner, supra.* No such distinction, however, in non-slave state. *Norris v. Williams,* 39 Ohio. St. 554.